



FACT SHEET: CRA challenge to ESSA rule would give Betsy DeVos a blank check to undermine public education

Topline Message Guidance:

- *Repealing the ESSA rule would have far-reaching consequences for students across the nation and would give DeVos more power to implement her privatization agenda that threatens our children's public education.*
- *Without this rule to help ensure that ALL children are improving and states have the clarity they need to implement this bipartisan law, many students – especially the most vulnerable – could be left behind.*

Repealing the ESSA rule would have far-reaching consequences for students across the nation and would give DeVos more power to implement her privatization agenda that threatens our children's public education.

- **Without this rule, DeVos would have leeway to disregard critical civil rights protections further clarified in the ESSA rule, harm low-income students, students with disabilities, minority students, and English learners, and drain public schools of the resources they need.** After the HELP Committee's confirmation hearing, it is clear that DeVos is fundamentally incapable of leading the Department. This CRA would give DeVos **increased authority in implementing accountability standards** across the nation. [Washington Post, [1/18/17](#)]
- **This rule provides clarity for states, school districts, and education stakeholders on critical components of the bipartisan education reform bill passed last Congress.** The Every Student Succeeds Act (ESSA) was agreed to with overwhelming bipartisan support in both houses of Congress, where it passed 359-64 in the House and 85-12 in the Senate, and signed into law by President Barack Obama on December 10, 2015. The ESSA rule provides clarity for states, school districts, and other stakeholders to implement parts of the law regarding school accountability, data reporting, and state plans. Without this rule, implementation of the law will be thrown into chaos and bipartisan spirit of the legislation will be lost. [Department of Education Release, [11/28/16](#); S.1177, [12/10/15](#); Department of Education, [11/28/16](#)]

- **The rule gives states more flexibility in key areas while ensuring that every child receives a high-quality and well-rounded education.** The rule provides clarity to allow for a more comprehensive picture of school success, better tailored to students and better able to provide flexibility for schools, parents, and teachers. The rule also ensures that parents and stakeholders have access to information about how students and schools are doing. [Department of Education Release, [11/28/16](#); Fact Sheet, [11/28/16](#)]
- **Passing this resolution would disrupt planning for ESSA implementation in schools across the country and create uncertainty about ESSA state plans.** States need the ESSA rule to maintain proper implementation of the law. One of the key clarities the rule provides is granting states an additional year to identify schools for improvement so that identification does not need to begin until the 2018-19 school year. Republicans, Democrats, and education stakeholders in the field asked for and strongly supported this clarification. Without this rule, school identification could revert back to the 2017-18 school year, potentially cutting off states' ability to use their new multiple-measure accountability systems, as required by ESSA, for identification. If the rule are overturned or delayed, states could continue using their current accountability systems. This is wholly inconsistent with one of the bipartisan stated goals of ESSA: state flexibility to use multiple measures for statewide accountability systems. [US News, [2/1/17](#)]

Without the ESSA rule to ensure that ALL children are improving, many students – especially the most vulnerable – could be left behind.

- **This rule is critical to national efforts to close the achievement gap between children of different backgrounds and income levels.** Stanford University released a report last year identifying the disparities among schools nationwide. Using data from every school district around the country and more than 200 million test scores, this research concluded that nearly all school districts with substantial minority populations have a large achievement gap when comparing white students' test scores to those of black or Hispanic students. Rolling back this rule would harm ESSA's data-driven and bipartisan efforts to help close these gaps. [Stanford, [4/29/16](#)]
- **Without the implementation of this rule, an array of advocacy groups are concerned about the impact on children and implementation of this law.** The following groups have expressed concerns about H.J. Res. 57:
 - **The American Federation of Teachers:** "The ESSA regulations are not perfect—and when released, the AFT and many affiliates raised concerns. On balance, however, **these regulations provide states with the flexibility promised under ESSA while maintaining important guardrails for equity and financial accountability.** These regulations took a full year to create and were crafted with much stakeholder engagement, including input (both positive and negative) from thousands of educators and parents. And now, the states are deep in the process of developing state plans based on the template created to align with the current ESSA regulations. **Repealing these regulations now would not just be counterproductive and disruptive, but would demonstrate a disregard by Congress of school districts'**

operations and timelines. Districts are planning for their next school year right now. Delay reinforces that this law is being implemented in a top-down manner and that Washington is not listening to the needs of stakeholders—ironically, the opposite of what the large bipartisan majority intended in enacting ESSA. The ESSA regulations are not a return to the rigid prescriptiveness of the No Child Left Behind era. Instead, **they provide needed accountability for federal funding and enforcement of key civil rights protections for students.**” [Randi Weingarten, [3/3/17](#)]

- **National Disability Rights Network:** “[The] ESSA accountability regulations are critical for meaningful implementation...To rescind these regulations would not only be a disservice to the spirit of ESSA and diminish the efficacy of the law, but would also serve to **undermine the equity of educational opportunity for all students, including students with disabilities....**” [NDRN, [2/3/17](#)]
- **Consortium for Citizens with Disabilities:** “The CCD Ed Task Force believes that the ESSA accountability regulations are critical for meaningful implementation of ESSA.... We view this as critical to **helping shine a needed light on the education gap for groups of students, including students with disabilities so they can make important gains and achieve the same education outcomes as their peers**” [CCD, [2/6/17](#)]
- **Leadership Conference on Civil and Human Rights** and 29 other civil rights organizations: “The underlying accountability and state plan regulation will help states, districts, and schools to faithfully implement the law and meet their legal obligations to historically marginalized groups of students including students of color, students with disabilities, and students who are English learners, immigrants, girls, Native American, LGBTQ or low-income...Congress should reject the effort to overturn these regulations under the Congressional Review Act (CRA) and should preserve critical protections for marginalized students.” [The Leadership Conference on Civil and Human Rights, [2/6/17](#)]
- **U.S. Chamber of Commerce, The Education Trust, The Leadership Conference, National Center for Learning Disabilities, NCLR, COPAA, and Democrats for Education Reform:** “Just as we believe the Every Student Succeeds Act incorporates our principles, we believe the [accountability] regulations do as well. And they provide states with the clarity they need to move forward. We do not support this resolution.” [The Education Trust, [3/2/17](#)]

Passing this CRA could stop new rules on ESSA in the future.

The CRA could stop the Department of Education from doing its job. Under the CRA, an agency cannot issue any future rules “substantially the same” as the repealed rule unless Congress passes a new law. This could effectively tie the hands of the agency in any matters relating to ESSA implementation. [[5 U.S.C. § 801](#)]

- **An analysis in the Washington Law Review argues that it is “conceivable that any subsequent attempt to regulate in any way whatsoever in the**

same broad topical area would be barred” under the “substantially similar” language. [Washington College of Law, [2011](#)]

- **The “substantially similar” language is vague and undefined, and a violation “may be a matter for Congress alone to decide.”** Because the CRA prohibits judicial review, Congress could be the only ones with authority to make the distinction. [CRS, [11/17/16](#)]